



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 665**

**[Docket No. 210929-0200]**

**RIN 0648-BH65**

**Pacific Island Fisheries; Modifications to the American Samoa Longline Fishery Limited Entry Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 9 to the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). It modifies the American Samoa longline fishery limited entry program to consolidate vessel class sizes, modify permit eligibility requirements, and reduce the minimum harvest requirements for small vessels. This final rule also makes several housekeeping changes to the program's regulations. The intent of this rule is to reduce regulatory barriers that may be limiting small vessel participation in the fishery, and provide for sustained community and American Samoan participation in the fishery.

**DATES:** The final rule is effective *[insert date 30 days after date of publication in the **FEDERAL REGISTER**]*.

**ADDRESSES:** Copies of Amendment 9, including an environmental analysis and Regulatory Impact Review, and

other supporting documents for this action are available at <https://www.regulations.gov/document/NOAA-NMFS-2018-0023-0001>.

Written comments and recommendations for the information collection contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, and to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

**FOR FURTHER INFORMATION CONTACT:** Kate Taylor, NMFS PIR Sustainable Fisheries, 808-725-5182.

**SUPPLEMENTARY INFORMATION:** The Western Pacific Fishery Management Council (Council) and NMFS manage the American Samoa longline fishery under the FEP and implementing Federal regulations. The fishery is currently limited to 60 permits distributed over four vessel size classes. Permits are valid for three years, and issued only to individuals who meet specific eligibility criteria. A permit holder must also meet minimum landing requirements within three years to renew the permit. Existing requirements have created programmatic barriers that may be hampering small vessel participation in the fishery. As described in Amendment 9, the Council recommended changes to the program that will reduce complexity and provide for sustained community participation in the small vessel American Samoa

deep-set longline fishery. This final rule implements the new provisions established by Amendment 9, as follows:

- Consolidate four existing vessel sizes classes into two, i.e., small (less than 50 ft (15.2 m)) and large (equal to or larger than 50 ft (15.2 m));
- Permit holders must be U.S. citizens or nationals. Applicants do not need to document a history of participation to be eligible for a permit, but if there is competition between applicants, NMFS will continue to use a priority ranking system based on earliest documented history of fishing in a vessel class size;
- Permits may be transferred only among U.S. citizens or nationals. There is no requirement for documented participation in the fishery to receive a transferred permit;
- The small vessel minimum harvest requirement is now 500 lb (227 kg) of pelagic management unit species (MUS) within a 3-year period. (The large vessel harvest requirement remains 5,000 lb (2,268 kg) over three years);
- The minimum harvest amount must be landed in American Samoa within a 3-year permit period. These required harvests need not be caught within the U.S. exclusive economic zone (EEZ) around American Samoa;

- Permits are valid for the same, fixed 3-year period as the 3-year period required to make a minimum harvest; and
- When a permit is transferred, the minimum harvest period does not restart. If the minimum amount has not been caught at the time of transfer, the new permit owner is required to meet the harvest requirement based on the following formula: the product of percentage of time left within the 3-year permit period and the minimum harvest amount.

You may find additional background information on this action in the preamble to the proposed rule (86 FR 37982, July 19, 2021).

### **Comments and Responses**

On June 30, 2021, NMFS published the notice of availability (NOA) for Amendment 9 and request for public comments (86 FR 34711); the comment period ended August 30, 2021. The American Samoa Department of Marine and Wildlife Resources provided comments on Amendment 9 that generally supported the changes established by the Council, and offered to work with NMFS on future reporting and permitting issues in this and other fisheries.

On July 19, 2021, NMFS published a proposed rule and request for public comments (86 FR 37982); the comment period ended September 2, 2021. NMFS received comments from the Hawaii Longline Association (HLA), and responds below.

*Comment 1:* HLA noted that two dozen Hawaii vessels also hold American Samoa longline permits. Although the fishery is operating safely during the Covid-19 pandemic, HLA is concerned that a minimum landing requirement would force these dual-permitted vessels to land in American Samoa, possibly spreading the virus to an area that has been largely virus-free. HLA requested that NMFS delay the effectiveness of the landing requirement and associated 3-year period for large vessels until the threat caused by the pandemic has eased.

*Response:* The American Samoa Department of Health has health and safety protocols in place that are applicable to fishing vessels landing in the territory. During the pandemic, U.S. fishing vessels have continued to land in American Samoa under these requirements, which include proof of a negative Covid-19 test, evidence of having recovered from Covid-19 in the past six months, or proof of complete vaccination at least 14 days prior to the arrival. Anyone arriving in port must provide the documentation at least 72 hours prior to arrival. Prior approval is required for crew to disembark. Quarantine measures are also in place, as needed, for vessels entering the port.

These protocols have been effective. To date, there has been only one documented Covid-19 case in American Samoa. Based on the effective health and safety protocols in place there, NMFS does not agree that a delay in

effectiveness for the minimum harvest landing requirements for large vessels is warranted.

### **Changes from the Proposed Rule**

This final rule does not make any substantive changes from the proposed rule.

This rule does make three administrative housekeeping changes. The first revises 50 CFR 665.14 relating to reporting. After NMFS published the proposed rule for this action, we published a separate final rule that requires electronic reporting for American Samoa Class C and D vessels (86 FR 42744, August 5, 2021). Because this final rule replaces the former C and D classes with a single large vessel class, we are updating § 665.14 to clarify that large vessels must report electronically.

The second modifies 50 CFR 665.802(x) relating to observer coverage. In the proposed rule, we erred in using the term "large vessel," which is a vessel equal to or greater than 50 ft long. If implemented, we would have inadvertently removed the requirement for a vessel between 40 and 50 ft to carry an observer. In Amendment 9, the Council did not recommend removal of the observer coverage requirement for vessels between 40 and 50 ft in length overall (LOA), and this final rule correctly implements the Council's intention by replacing "large vessel" with "vessel greater than 40 ft (12.2 m) LOA" in § 665.802(x).

The third housekeeping changes are in 50 CFR 665.816, relating to permit validity. Amendment 9 established a requirement that the duration of a permit is three years from the date of issuance and that the term of the permit validity does not change or reset in the event of a permit transfer. To accurately implement the recommendations in Amendment 9, this rule adds a new § 665.816(f) that clarifies that a permit is valid for three years. The rule also clarifies in § 665.816(h) (1) and (3) the 3-year permit term and that it does not change in the event of a transfer.

#### **Classification**

Pursuant to section 304(b) (3) of the Magnuson-Stevens Fishery and Conservation Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS did not receive any comments regarding this certification. As a

result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains a change to a collection of information requirement for the purposes of the Paperwork Reduction Act (PRA). This rule revises the existing requirements for the collection of information under OMB Control Number 0648-0490 Pacific Islands Permit Family of Forms by modifying the type of permit issued in the American Samoa longline fishery limited entry program. Changes required under this rule applicable to the PRA include the consolidation of the four current permit size classes (Class A, B, C, and D) into two permit class sizes (small and large), the restriction of permit eligibility to U.S. citizens, U.S. nationals, and U.S. companies, partnerships, or corporations, and the elimination of the requirement to have documented history of participation in the fishery to be eligible for a permit. These changes require revising the permit application form. In the proposed rule published in the **Federal Register** for a 45-day comment period, NMFS indicated our intent to revise this information collection (86 FR 37982, July 19, 2021). The revision is not expected to affect the number of respondents or anticipated responses or to effect the number of burden hours and burden cost to fishermen. The



public reporting burden for completing an American Samoa longline fishery permit application is estimated to average 1.25 hours per response, including the time for reviewing instructions, gathering the data needed, and submitting the permit application.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website:

[www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0490.

Notwithstanding any other provisions of the law, no person is required to respond or, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

**List of Subjects in 50 CFR Part 665**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Longline, Pacific Islands.

Dated: September 29, 2021.

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Samuel D. Rauch, III,  
Deputy Assistant Administrator for Regulatory  
Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends  
50 CFR part 665 as follows:

**PART 665 -- FISHERIES IN THE WESTERN PACIFIC**

1. The authority citation for 50 CFR part 665  
continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 665.12, add the definition of "Small vessel"  
in alphabetical order to read as follows:

**§ 665.12 Definitions.**

\* \* \* \* \*

*Small vessel* means, as used in this part, any vessel  
less than 50 ft (15.2 m) in length overall.

\* \* \* \* \*

3. In § 665.14, revise paragraph (b)(1)(ii)(A) to read  
as follows:

**§ 665.14 Reporting and recordkeeping.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) The operator of a fishing vessel subject to the requirements of § 665.801(b) or a large vessel subject to the requirements of § 665.801(c) must maintain on board the vessel an accurate and complete record of catch, effort, and other data electronically using a NMFS-certified electronic logbook, and must record and transmit electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day.

\* \* \* \* \*

4. In § 665.19, revise paragraph (a)(2) to read as follows:

**§ 665.19 Vessel monitoring system.**

(a) \* \* \*

(2) American Samoa large vessel longline limited entry permit issued pursuant to § 665.801(c);

\* \* \* \* \*

5. In § 665.802, revise paragraph (x) to read as follows:

**§ 665.802 Prohibitions.**

\* \* \* \* \*

(x) Fail to comply with a term or condition governing the observer program established in § 665.808, if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel greater than 40 ft (12.2 m) LOA registered for use with an American Samoa longline limited access permit to fish for western Pacific pelagic MUS using longline gear.

\* \* \* \* \*

6. Revise § 665.816 to read as follows:

**§ 665.816 American Samoa longline limited entry program.**

(a) *General.* Under § 665.801(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. Under the American Samoa Longline Limited Entry Program, the maximum number of longline fishing permits available is limited to 60 permits annually.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by, but not necessarily limited to, a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an American Samoa-based cannery, retailer or wholesaler, an American Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa; or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest western Pacific pelagic MUS in the EEZ around American Samoa. If the applicant does not possess the necessary documentation of evidence of work on a fishing trip based on records available only from NMFS or the Government of American Samoa (e.g., creel survey record or logbook), the applicant may issue a request to PIRO to obtain such records from the appropriate agencies, if available. The applicant should provide sufficient information on the fishing trip to allow PIRO to retrieve the records.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) *Vessel size classes*. The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Small vessel, which is less than 50 ft (15.2 m) LOA.

(2) Large vessel, which is equal to or over 50 ft (15.2 m) LOA.

(d) *Permit eligibility*. Any U.S. national or U.S. citizen or company, partnership, or corporation is eligible for an American Samoa longline limited access permit.

(e) *Permit issuance.* (1) If the number of permits issued falls below the maximum number of permits allowed, the Regional Administrator shall publish a notice in the **Federal Register** and use other means to notify prospective applicants of any available permit(s) in each class. Any application for issuance of a permit must be submitted to PIRO no later than 120 days after the date of publication of the notice on the availability of additional permits in the **Federal Register**. The Regional Administrator shall issue permits to persons according to the following priority standard:

(i) Priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa from smallest to largest vessel.

(ii) In the event of a tie in the priority ranking between two or more applicants, the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) An application must be made, and application fees paid, in accordance with § 665.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary

information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Assistant Regional Administrator for Sustainable Fisheries shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of appropriate size to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days of the date of the letter of notification, the Assistant Regional Administrator for Sustainable Fisheries shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the

issuance process pursuant to paragraph (e)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph (e)(3) within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 665.801(o).

(f) *Permit term.* The duration of a permit is three years from the date of issuance by NMFS.

(g) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. The application for permit transfer must be submitted to the Regional Administrator within 30 days of the transfer date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Assistant Regional Administrator for Sustainable Fisheries, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 665.13(c).

(1) An American Samoa longline limited access permit may be transferred (by sale, gift, bequest, intestate



succession, barter, or trade) to only the following persons:

(i) A western Pacific community located in American Samoa that meets the criteria set forth in section 305(I)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(I)(2), and its implementing regulations in this part; or

(ii) Any U.S. citizens or national.

(2) Additionally, an American Samoa longline limited access small vessel permit may also be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to a family member of the permit holder.

(h) *Permit renewal.* (1) An American Samoa longline limited access permit will not be renewed following three years in which the vessel(s) to which it is registered landed less than:

(i) Small vessel: a total of 500 lb (227 kg) of western Pacific pelagic MUS harvested using longline gear; or

(ii) Large vessel: a total of 5,000 lb (2,268 kg) of western Pacific pelagic MUS harvested using longline gear.

(2) For all vessels, the minimum harvest amount must be landed in American Samoa.

(3) In the event of a transfer, the new permit holder would be required to meet the harvest requirement based on the following formula: Remaining harvest amount = product

of percentage of time left within the 3-year permit period and the minimum harvest amount for that size vessel. The original permit term and duration does not change in the event of a transfer.

(i) *Concentration of permits.* No more than 10 percent of the maximum number of permits, of both size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for calculating whether the 10-percent standard has been reached.

(ii) [Reserved]

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